

STATE OF MICHIGAN
COURT OF APPEALS

In re CLARK/WOODSON-CLARK, Minors.

UNPUBLISHED
July 19, 2016

No. 331062
Wayne Circuit Court
Family Division
LC No. 13-512458-NA

Before: JANSEN, P.J., and FORT HOOD and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right orders terminating her parental rights to the minor children, SEW and JPC. We affirm the portion of the trial court's orders determining that statutory grounds for termination existed, but vacate the trial court's best-interest analysis and remand for further consideration consistent with this opinion.

Respondent first argues that the trial court erred in finding statutory grounds for termination. We disagree. "To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). We review for clear error a trial court's finding that a statutory ground for termination has been established. *Id.* "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.*

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(a)(i), (a)(ii), (c)(i), (c)(ii), (g), and (j). Initially, we note that petitioner concedes the inapplicability of MCL 712A.19b(3)(a)(i) and (c)(ii). We agree, and do not discuss these grounds further, as only one ground for termination of parental rights need be established. *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012). We conclude that the trial court did not err in its decision to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j).

Here, the children were removed from respondent and placed with their maternal grandfather in April 2013 because of respondent's severe mental health issues. A case service plan required respondent to participate in parenting classes, individual therapy, and mental health treatment; maintain suitable housing and income; and receive both housing assistance and help with managing resources in her area that would benefit her and the children. Although respondent initially participated in her case service plan and attended supervised visitation with

the children, she ultimately failed to comply with the service plan. Respondent was terminated from her individual therapy and mental health services due to lack of attendance, she was not compliant in taking medication prescribed for her mental illness, and although she completed parenting classes, there was evidence that she did not benefit from the service because she was unable to comprehend the lessons or to display that she could understand what was taught.

Moreover, respondent stopped consistently attending the scheduled supervised visits with the children. At a review hearing on September 2, 2014, it was revealed that respondent had attended only 9 of the 29 scheduled visits since the last court hearing. As of December 8, 2014, respondent had attended only 1 out of 25 scheduled supervised visits during that reporting period. As of March 30, 2015, respondent had not visited SEW since August 13, 2014, and she had only visited JPC once since October 29, 2014, despite having received reminders of the scheduled visits from the foster care worker. As of May 1, 2015, respondent had attended two out of six scheduled supervised visits with the children. Also, the foster care worker testified that she sent bus tickets and letters to respondent reminding her of the visits. Because respondent would confirm the visits but then fail to show up, respondent was required to appear at the agency before the children left their home to come to the visit. As of December 9, 2015, the date of the termination hearing, respondent had not visited the children since April 2015, and she had provided no explanation for her failure to visit the children. Respondent had not sent gifts or money to the children to the best of the foster care worker's knowledge. In addition, respondent failed to attend the termination hearing and five of the six previous review hearings.

MCL 712A.19(b)(3)(a)(i) allows termination where “[t]he child’s parent has deserted the child for 91 or more days and has not sought custody of the child during that period.” Given respondent’s failure to visit the children for seven months before the termination hearing, her failure to comply with her court-ordered service plan, her failure to provide any support for the children, and her failure to attend the termination hearing and most of the preceding review hearings, the trial court did not clearly err in finding that termination was warranted on the basis of desertion for 91 or more days under MCL 712A.19b(3)(a)(i).

Although unnecessary, we briefly address MCL 712A.19b(3)(c)(i), (g), and (j). Termination is proper pursuant to MCL 712A.19b(3)(c)(i) when 182 days have passed since the issuance of the initial dispositional order, and “conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.” Here, it is undisputed that more than 182 days had passed since issuance of the initial dispositional order. Further, the conditions that led to the adjudication continued to exist. The children were removed from respondent’s care because of her severe mental illness. At the bench trial on the petition, respondent expressed willingness to undergo counseling. However, as discussed, respondent failed to comply with her service plan in regard to her mental health. Respondent did not successfully attend therapy or take her prescribed medication. Given that respondent failed to comply with the service plan developed to address the mental health issues that led to the adjudication, the trial court did not clearly err in finding clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(i).

The next ground for termination in this case is MCL 712A.19b(3)(g), which requires a court to find by clear and convincing evidence that “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent

will be able to provide proper care and custody within a reasonable time considering the child's age." "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). Respondent failed to comply with her service plan. She completed parenting classes but did not benefit from this service. She failed to complete her individual therapy and mental health treatment and was not compliant in taking her prescribed psychotropic medications. Respondent did not allow the foster care worker to assess her new home to determine if it was appropriate and failed to provide verification of her current income. She also failed to visit the children consistently. The trial court did not clearly err in finding clear and convincing evidence to support termination on this ground.

The final ground for termination is MCL 712A.19b(3)(j), which requires a court to find by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Harm includes both physical harm and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App at 711. As discussed, there was evidence that respondent failed to comply with the terms and conditions of her service plan. She did not complete individual therapy or mental health services and failed to benefit from parenting classes. Respondent's failure to comply with the service plan and to address her serious mental health issues supported the trial court's decision to terminate on this ground.

Respondent next argues that the trial court clearly erred in finding that termination of her parental rights was in the best interests of the children. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App at 40; MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews the court's determination regarding the child's best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 41-42 (internal citations omitted).

A child's placement with relatives weighs against termination, and the fact that a child is living with relatives is a factor to be considered in determining whether termination is in the child's best interests. *Id.* at 43, citing MCL 712A.19a(6)(a) and *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re Olive/Metts*, 297 Mich App at 43.

In this case, the trial court failed to explicitly address the fact that the children were placed with a relative, their maternal grandfather. See MCL 712A.13a(j) (defining "[r]elative" to include a grandparent). The trial court's orders terminating respondent's parental rights stated that the court had found that termination was in the best interests of the children. Neither the

orders or the report and recommendation of the referee, on which the trial court relied, explicitly addressed relative placement. In this case, relative placement was at issue, as the maternal grandfather preferred to do a guardianship over termination of respondent's rights. The trial court's failure to explicitly address whether termination was appropriate in light of a relative placement renders the factual record inadequate to make a best-interest determination. *In re Olive/Metts*, 297 Mich App at 43. We therefore vacate the trial court's best-interest determination and remand for further analysis of that issue. *Id.* at 44.

Affirmed in part, vacated in part, and remanded for further consideration of the best-interests issue as required by *In re Olive/Metts*. We retain jurisdiction.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Mark T. Boonstra

Court of Appeals, State of Michigan

ORDER

In re Clark/Woodson-Clark, Minors

Docket No. 331062

LC No. 13-512458-NA

Kathleen Jansen
Presiding Judge

Karen Fort Hood

Mark T. Boonstra
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand to the trial court to consider the effect of the children's placement with relatives as it related to its best interests analysis. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

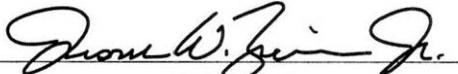
The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 19 2016

Date


Chief Clerk